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Case No. 5719

USPTO Customer No. 25280

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Chan et al.
Serial Number: 10/783,729
Filed: February 20, 2004
For: **COMPOSITIONS AND METHODS FOR CLEANING TEXTILE
SUBSTRATES**
Group Art Unit: 1796
Examiner: Hardee, John R

REPLY BRIEF

Commissioner for Patents
PO Box 1450
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CERTIFICATE OF FACSIMILE TRANSMISSION UNDER 37 C.F.R. § 1.8(d)

I hereby certify that this correspondence is being transmitted by facsimile to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, at (571) 273-8300.

Date: July 27, 2009

Signature:

Name: Melody Towery

Sir:

The following Reply Brief is submitted in response to the Examiner's Answer dated May 27, 2009.

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Remarks

The Office states, in the Examiner's Answer (page 9), that Applicants' Declaration under 37 CFR §1.132 (dated September 19, 2006) is now moot, since the claim language was amended from "consisting essentially of" to "consisting of." Additionally, the Office states (Examiner's Answer, page 9) that although Trinh teaches the incorporation of silicone in its preferred embodiment, it would be obvious to omit it and arrive at Appellants' claimed invention. Appellants respectfully disagree with these assertions.

In order to establish a *prima facie* case of obviousness, MPEP 2143 states that (a) there must be a motivation or suggestion to combine [or modify] the references, (b) there must be a reasonable expectation of success if the combination or modification is made, and (c) all the claim limitations must be considered. Applicants respectfully submit that all of (a) – (c) have not been met; and therefore, the instant claims are not obvious in light of the prior art.

The Declaration submitted by Appellants conclusively illustrates that the inclusion of silicone, as taught by Trinh, deleteriously affects the cleaning efficacy of Appellants' claimed cleaning composition. Appellants respectfully submit that the Office has provided no motivation for why one of ordinary skill in the art would modify the teachings of Trinh and eliminate silicone from it's the cleaning composition. Furthermore, since Trinh teaches the inclusion of silicone in its preferred embodiments, why would one of ordinary skill in the art consider there to be a reasonable expectation of success in making such a modification to the teachings of Trinh?

Thus, with respect to the teachings of Trinh, that the inclusion of a silicone compound is preferred, Appellants respectfully submit that the Declaration submitted previously is clearly relevant to the rejection at hand and conclusively illustrates that the inclusion of a silicone compound, as taught by Trinh, deleteriously affects the cleaning efficacy of Appellants' claimed cleaning composition.

With respect to the suitability of the use of Trinh's composition for cleaning carpets, Appellants note that Trinh teaches that the cleaning composition is suitable for cleaning hard surfaces, such as "car painted and vinyl surfaces" (see Trinh, claim 17). In this regard, Trinh further states:

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Current car cleaners/polishes utilizing mineral-based abrasives have problems associated with their use. Such abrasives are inherently comprised of relatively hard particles which abrade the painted surfaces. They are used in polishes to remove the top oxidized layer of the painted surfaces. Therefore, they should be used only occasionally. When these cleaners/polishes of the prior art are used regularly, such abrasive particles cause excessive wear to painted surfaces. The use of cleaners/polishes of the prior art which utilize such abrasives has also been known to damage the vinyl surfaces (col. 1, lines 20-30; emphasis added).

An object of the present invention is to provide a substantially nonabrasive liquid car cleaner which can be used frequently on auto body paint without substantial damage to the paint (col. 2, lines 13-16; emphasis added).

Thus, Appellants respectfully submit that there is no teaching or suggestion of the suitability of Trinh's cleaning composition for cleaning a textile substrate. Rather, the invention of Trinh is directed to cleaning hard surfaces, such as the painted surfaces of automobiles. Appellants invention is clearly directed to cleaning textile substrates, which further supports Appellants assertion that one of ordinary skill in the art of cleaning textile substrates would not look to the teachings of Trinh, modify such teachings, and arrive at Appellants claimed invention.

With respect to the Office's assertion that Trinh teaches "dispersion stabilizing agents" as claimed by Appellants, Appellants respectfully disagree. The Office submits that Trinh's teaching of "suspending agents" is the same Appellants "dispersion stabilizing agents" because both agents exhibit the property of dispersing solid particles and liquid droplets. Appellants respectfully disagree on the basis that the Office has merely invoked hindsight reconstruction to pick and choose materials taught by Trinh and placed them together to form an improper rejection of the claims. Case law has held that one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. See *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988). Rather, "the invention as a whole" should be considered. *Jones v. Hardy* 220 USPQ 2d 1021, 1025 (Fed. Cir. 1984). *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed Cir. 1992) also states that "It is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious."

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Thus, Appellants respectfully submit that the Office has not considered the invention as a whole, but instead, has merely picked and chosen ad hoc teachings of the prior art reference to reject Appellants claims as obvious variations of said reference.

Accordingly, Appellants respectfully submit that the rejection over the teachings of Trinh fails to provide a *prima facie* case of obviousness, since (a) there is no motivation or suggestion to modify the reference, (b) there is no reasonable expectation of success, even if the modification is made, and (c) all claim limitations have not been considered, as required by MPEP 2143. Reconsideration and withdrawal of this rejection is earnestly and respectfully requested.

With respect to the combination of (1) Froehlich et al. '594 in view of Chapman et al. '781 and (2) Froehlich et al. '594 in view of Froehlich et al. '848 or Brown '302, Appellants respectfully submit that both of these rejections could have been made earlier by the Office, and furthermore, that it was improper to apply them to the claims at this point in prosecution. As a matter of fact, Froehlich et al. '594 was cited by Appellants on the Information Disclosure Statement submitted by Appellants on July 29, 2004, and which was considered by the Office on January 8, 2005. Froehlich et al. '594 was also described by Appellants in the specification on page 3, lines 18-21. Accordingly, Appellants respectfully submit that these rejections could have been submitted earlier and are thus improperly applied to the claims at this point in the prosecution history, i.e. about 4 and ½ years have passed since the mailing of the first Office Action.

Further, it was Appellants intent to merely re-instate the previously filed Appeal (see Appeal Brief dated September 2, 2008), for it was not clear that the Office had proper authority to re-open prosecution. There was no evidence in the Office Action dated October 17, 2008, that the Examiner had received supervisory approval to re-open prosecution on this application, as required by MPEP 1207.04. However, the Examiner did indeed re-open prosecution and submitted new rejections (in addition to the same previous rejections) in the Office action dated October 17, 2008.

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Nonetheless, Appellants respectfully disagree with the rejection of the claims over (1) and (2) recited immediately above on the basis that (a) such rejections could have been made earlier by the Office and (b) the combination of references teach a powdered cleaning composition (title; abstract) which does not contain any dispersion stabilizing agent, as recited by each of Appellants independent claims. Thus, the requirements for *prima facie* obviousness, as required by MPEP 2143, have not been met.

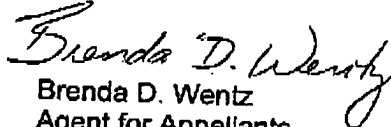
Thus, for the reasons set forth above, and as set forth in Appellants' Appeal Brief previously submitted, Appellants respectfully urge that the rejections of Claims 1 – 5, 8 – 12, 18, 31, 34, 37 and 39 – 42 are improper. Reversal of all rejections is hereby requested.

The Commissioner is authorized to charge any fees that may be required, or credit any overpayment, to Deposit Account No. 04-0500.

Respectfully submitted,

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